

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION**

In the Matter of

NSTAR ELECTRIC & GAS  
CORPORATION

Employer-Petitioner

and

UNITED STEELWORKERS OF AMERICA,  
LOCAL NO. 12004, AFL-CIO, CLC

Union

and

UTILITY WORKERS UNION OF  
AMERICA, LOCAL NO. 369, AFL-CIO

Union

Case 1-UC-815

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Case 1- RM-1263

**DECISION, DIRECTION OF ELECTIONS, AND ORDER**<sup>1</sup>

As a result of various mergers of separate electric and gas utility companies, NSTAR Electric & Gas Corporation (NSTAR) now exists as a public utility providing both electricity and gas to customers in Boston and various other cities and towns in eastern Massachusetts. NSTAR's corporate headquarters, called "the Summit," is located

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<sup>1</sup> Upon petitions duly filed under Section 9(b) and 9(c), respectively, of the National Labor Relations Act, as amended, a consolidated hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer-Petitioner is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) no question affecting commerce exists in Case 1-RM-1263 concerning the representation of certain employees of the Employer-Petitioner within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

in Westwood, Massachusetts, and its employees report there as well as to various gas service centers, electric service centers, and combined electric and gas service centers throughout its service territory.

For many years, the Utility Workers Union of America, Local No. 369 (Local 369) or its predecessor locals<sup>2</sup> and the United Steelworkers of America, Local No. 12004 (Local 12004) have represented employees employed by NSTAR or its predecessors<sup>3</sup> in two separate bargaining units. NSTAR, the Employer-Petitioner in this matter, asserts that, because of the consolidation of certain of its facilities and operations, the two existing units no longer have a separate community of interest, and the smaller unit currently represented by Local 12004 should be accreted into the larger unit represented by Local 369. If, however, the Region finds that the creation of such a system-wide unit is not appropriate, NSTAR contends that there should be a finding that at least certain groups of employees in the Local 12004 unit constitute an accretion to the Local 369 unit, i.e., 1) all Local 12004 employees who work in NSTAR's combined gas and electric service centers in Somerville, Hyde Park,<sup>4</sup> and Southborough, Massachusetts; or 2) at

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<sup>2</sup> Local 369 did not assume its present form until December 2000. Prior to this time, the bargaining unit was actually composed of eight separate bargaining units represented by six separate locals – three Utility Workers Union of America (UWUA) locals, one of which was Local 369, and three Brotherhood of Utility Workers (BUW) locals. In February 2000, the UWUA and the BUW merged at the national level. Near the end of 2000, a series of mergers between the six separate UWUA and BUW locals took place, resulting in a much larger Local 369 that now includes a wide variety of employees, both gas and electric, working in physical, clerical, professional, and technical jobs.

<sup>3</sup> In 1999, BEC Energy and Commonwealth Energy System (COM/Energy) merged to form NSTAR, a holding company. NSTAR Gas & Electric Corporation, a subsidiary of the parent company, NSTAR, was formed on May 31, 2001. NSTAR Electric & Gas Corporation is the employer of the employees at issue in this case.

<sup>4</sup> Hyde Park is a neighborhood of Boston, Massachusetts.

least those Local 12004 employees who work side-by-side with Local 369 employees at the combined service centers, i.e., garage, warehouse, facilities, and gas meter shop employees; and 3) 23 Local 12004 employees who have recently been relocated from Southborough to NSTAR's corporate headquarters in Westwood. In the alternative, NSTAR seeks an election in a company-wide unit or, at least, among the employees at the three combined electric and gas service centers in Somerville, Hyde Park, and Southborough.

Local 12004 and Local 369 assert that there have been no changes that warrant disturbing Local 12004's representation of NSTAR employees,<sup>5</sup> and that their contracts with NSTAR serve as a bar to any election. Both unions assert that what is at issue in this matter are really disputes over work assignments, which should be resolved through the contractual grievance and arbitration process.

I find that the changes made by NSTAR do not warrant a system-wide accretion of the Local 12004 unit into the Local 369 unit, nor an election in a system-wide unit, nor an accretion or election among all of the employees at the three combined service centers, whether considered separately or as a group. I find, however, that some of the changes have created a new operation for certain groups of employees, and I will permit those employees to vote whether they wish to be included in the Local 369 or the Local 12004 unit. Specifically, separate voting groups composed of the employees in the gas meter shop in Southborough, the auto mechanics in the garage in Southborough, the auto mechanics in the garage in Somerville, the cleaners in Hyde Park, and the installation and

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<sup>5</sup> At the hearing, Local 369 asserted that there has been no accretion, but that, if the Region should find that an accretion has occurred, a system-wide unit in which the smaller Local 12004 unit is accreted into the larger Local 369 unit would be appropriate. Local 369 did not pursue that alternative position in its post-hearing brief.

gas sales clerks at the Summit will be afforded the opportunity to vote for their chosen representative.

## **I. BACKGROUND**

Following the 1999 merger by which it was created, NSTAR closed and consolidated some of its facilities and began to relocate employees.<sup>6</sup> In 2001, NSTAR opened its new Summit headquarters building in Westwood. At that time, Local 369 Call Center and billing employees who had previously worked at the Prudential Center in Boston, in Wareham, and in temporary quarters in Westwood, were all relocated to the Summit, and an office building in Wareham was closed. In November 2001, NSTAR also closed the office area of its gas distribution service center in Southborough and relocated 45 Local 12004 Call Center and billing employees to the Summit, where they joined 178 Call Center and billing employees represented by Local 369.

In November 2001, NSTAR filed a unit clarification petition (1-UC-780) in which it advanced the same position as its primary position here, that all employees represented by Local 12004 should be merged by accretion into the bargaining unit represented by Local 369. During the processing of that UC petition, NSTAR also filed an RM petition (1-RM-1256) in which it petitioned for an election among the employees who work in the Call Center and billing department in Westwood. I consolidated those two cases and, on February 21, 2002, I issued a Decision, Order and Clarification of Bargaining Unit in those cases. In that Decision, I dismissed the RM petition, on the ground that the relocation of employees to the Call Center and billing department at the Summit did not

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<sup>6</sup> In November 2001, NSTAR closed a gas service center in Cambridge and relocated those employees to an electric service center in Somerville. The Somerville facility is now a combined gas and electric service center.

create a new operation giving rise to a question concerning representation. Rather, I found that the Local 12004 Call Center and billing employees at the Summit constituted an accretion to the bargaining unit represented by Local 369 because of the overwhelming community of interest between the Local 12004 and Local 369 employees in those departments and because Local 369 represented almost four times as many employees in those departments as did Local 12004. I found then that there was no basis to accrete the rest of the employees represented by Local 12004 into a “wall-to-wall” unit represented by Local 369, since they had continued to perform their work with few, if any, changes, since the formation of NSTAR. In the current cases, NSTAR maintains that there have been sufficient additional consolidations and changes since I issued my Decision in the prior cases so that an accretion of the Local 12004 unit into the Local 369 unit is now appropriate. Accordingly, I will first examine those consolidations and changes.

## **II. FACTS**

### **A. The current bargaining units and employee reporting locations**

NSTAR’s service territory is composed of two large, noncontiguous areas. One area, commonly referred to by the parties as “the South,” covers southeastern Massachusetts, including Cape Cod, with facilities in Plymouth, New Bedford, Wareham, Yarmouth, and Martha’s Vineyard. All bargaining unit employees in the South are represented by Local 369. The other area, which includes Boston, Somerville, Framingham, Southborough, Walpole, Waltham, Worcester, and surrounding towns, is referred to by the parties as “the North.” Its unionized employees are represented by both Local 369 and Local 12004.

Local 12004 currently represents a unit of approximately 260 gas employees<sup>7</sup> who work at NSTAR facilities in the North in Southborough, Somerville, Worcester, Hyde Park, and the Summit. They are covered by a collective-bargaining agreement effective from March 25, 2002 through March 31, 2006.

Local 369 currently represents a unit of approximately 2037 employees who work at all of the NSTAR locations. Of these, the vast majority are electric employees, while 93 are gas employees.<sup>8</sup> On October 1, 2002, NSTAR and Local 369 entered into a collective-bargaining agreement covering these employees, with effective dates from May 16, 2000 through May 15, 2005.

Specifically, the following numbers of bargaining unit employees currently report to the specified locations throughout NSTAR's service territory:<sup>9</sup>

Northern locations

<u>Facility</u>	<u>Type of facility</u>	<u>Loc. 369</u>	<u>Loc. 12004</u>
The Summit/Westwood	headquarters	464	23
Prudential Center/Boston	corporate	2 <sup>10</sup>	0

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<sup>7</sup> For ease of reference, I shall refer to employees who work on the gas side of NSTAR's business as "gas employees" and employees who work on the side of the business that provides electricity as "electric employees." As explained below, there are some employees, such as auto mechanics and warehouse employees, whose responsibilities may include both gas and electric work.

<sup>8</sup> The 93 gas employees represented by Local 369 include 64 in New Bedford, 15 in Plymouth, 3 in the meter shop in Southborough, 3 at the Summit, and 8 gas sales employees in Worcester, Southborough, Somerville, Hyde Park, and the Summit.

<sup>9</sup> These figures reflect the relocation of certain employees, described below, that had already taken place at the time of the hearing, such as the relocation of 23 employees from Southborough to the Summit, the transfer of certain employees from Dedham and a service center on Massachusetts Avenue in Boston to Hyde Park, and the transfer of meter shop employees from New Bedford to Southborough. These figures do not reflect the upcoming closure of the Framingham facility and its consolidation into the Southborough facility, described below.

Blackstone Station/Cambridge	steam boiler	19	0
Somerville	gas and electric	124	52
Mass. Ave./Boston	electric	547	0
Hyde Park/Boston	gas and electric	32	27
Framingham	electric	81	0
Southborough	gas	32	102
Waltham	electric	211	0
Worcester <sup>11</sup>	gas	2	56
Walpole	electric	60	0

Southern locations

<u>Facility</u>	<u>Type of facility</u>	<u>Loc. 369</u>	<u>Loc. 12004</u>
Plymouth	gas and electric	113	0
New Bedford <sup>12</sup>	gas and electric	176	0
Yarmouth	electric	140	0
Martha's Vineyard	electric	16	0
Wareham	garage	18	0

The Summit is the reporting location for NSTAR's chief executive officer, vice presidents, and other top executives, as well as many bargaining unit employees who

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<sup>10</sup> An administrative coordinator and graphic design specialist who are represented by Local 369 report to an office at the Prudential Center in Boston.

<sup>11</sup> The two Worcester employees represented by Local 369 are gas sales account executives, who began to report there in the summer of 2002.

<sup>12</sup> This includes five liquefied natural gas (LNG) operators who work at the nearby LNG facility in Acushnet.



perform administrative-type jobs. Departments located there include Customer and Corporate Relations, Gas Operations, Electric Operations, Engineering, Materials Management/Transportation, Investment Planning, Human Resources, Finance and Accounting, Strategy, Policy and Law, and Information Systems.

The electric service centers employ various types of workers who repair and maintain the overhead and underground electric system, the gas service centers employ various types of workers who repair and maintain the gas distribution system, and the combined electric and gas service centers employ both types of employees. The service centers also employ, *inter alia*, warehouse employees, auto mechanics, building maintenance employees, and numerous clerical employees. Blackstone Station in Cambridge, which houses a steam boiler, is the reporting location for lab technicians, station electricians, boiler operators, and steamfitters.

#### B. Recent and planned changes in operations or reporting locations

NSTAR points to the following consolidations and changes in support of its argument in favor of creating a system-wide unit by means of accretion or election.

##### **1. June 2002 - Transfer of all meter reading work to Local 369**

Both electric and gas meter reader employees collect data on consumption that is used for purposes of billing customers. Some meters are read by an automated meter reading system under which a radio signal allows the meter readers to obtain the data simply by driving down the street without having to visit each home or business individually. Other meters must be read manually by meter reader employees.

Until 2002, there were six Local 12004 meter readers in Somerville, who read the meters of gas customers, as well as the electric meters in Cambridge. There were 60 to

70 meter readers represented by Local 369, who worked out of the Summit and various field locations, and read electric meters system-wide. In March 2002, NSTAR and the two local unions negotiated an agreement under which Local 12004 agreed to turn over all meter reading work to employees in the Local 369 unit, effective June 2002.<sup>13</sup> Employees represented by Local 369 now perform all meter reading for both gas and electric meters system-wide.

## **2. July 2003 - Consolidation of the gas meter shop**

The function of NSTAR's gas meter shop, which is part of NSTAR's Gas Service organization, is to test, maintain, paint, and repair the gas meters that are used to bill customers for gas. Prior to July 2003, NSTAR maintained two separate gas meter shops. In July 2003, NSTAR closed the gas meter shop at its New Bedford facility and transferred two New Bedford meter shop employees,<sup>14</sup> who are represented by Local 369, to the gas meter shop at its Southborough facility, where the meter shop employees are represented by Local 12004. There is now one gas meter shop system-wide, and the two Local 369 meter shop employees work side by side with eight to ten Local 12004 gas meter shop employees in Southborough.<sup>15</sup> Employees in the gas meter shop work with

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<sup>13</sup> The former Local 12004 meter readers were moved into other positions and departments.

<sup>14</sup> Three meter shop positions from New Bedford were relocated, but one employee had been out or on light duty prior to the move.

<sup>15</sup> The Local 369 employees who work in the gas meter shop are called repair technicians and working leader, while the Local 12004 employees appear to be called meter repair technicians, service meter technicians, and/or special meter maintenance technicians. There was no testimony as to whether meter shop employees in both bargaining units are commonly supervised, but it appears from an organizational chart of the Gas Service group that was entered into evidence that the ten technicians in the meter shop have one supervisor.

There are currently meter shops for electric meters at Massachusetts Avenue/Boston and in Plymouth, which are staffed by electric meter repair technicians, electric meter testers, and service meter technicians represented by Local 369.

service technicians and distribution technicians when they go into the field to install, replace, or maintain meters for large commercial customers.<sup>16</sup> Local 12004 employees in the gas meter shop now travel to the New Bedford and Plymouth area to do jobs that were formerly done by the Local 369 employees in the New Bedford gas meter shop.<sup>17</sup>

### **3. August 2003 - Relocation of 23 Local 12004 gas employees and 2 unrepresented gas employees to the Summit**

Local 369 represents 464 employees who work at the Summit, NSTAR's corporate headquarters. These include over 200 customer service representatives and clerks with various titles, who work in the Call Center. Other Local 369 employees at the Summit include accountants, account executives, administrative coordinators, buyer-planners, computer operators and technicians, construction technicians and engineers, drafting technicians, designers, field service meter readers, account executives, office assistants, operating mechanics, project engineers, systems and procedures analysts, telecommunications employees, and numerous clerical employees with various titles.

In August 2003, NSTAR transferred 23 gas employees represented by Local 12004 from Southborough to the Summit. This group includes ten service dispatchers, five load dispatchers, two end user transportation representatives, a dispatch clerk, an

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<sup>16</sup> The service technicians and distribution technicians with whom they work are represented by Local 12004 in the North and by Local 369 in the South.

<sup>17</sup> A different group, called Meter Operations, is responsible for installing and replacing electric meters. Field service technicians and field service representatives in this group are assigned to the various field service centers. Local 369 field service technicians and representatives who work out of the New Bedford and Plymouth service centers service both gas and electric meters, which they have done for many years. In December 2003, NSTAR assigned some Local 12004 gas employees on light duty to the Meter Operations group to work in two-person teams for two to three weeks. One of the teams was composed of an employee from each of the two bargaining units.

installation clerk, and four clerk detailers. In addition, it transferred two unrepresented technical services clerks from Southborough to the Summit.

The service dispatchers work within the Gas Service group. They dispatch service technicians from the service centers to handle problems with gas service, such as calls about gas odor, high bills, or lack of heat or hot water. They handle requests for gas service company-wide.<sup>18</sup> When gas customers call for service, they reach customer service representatives in the Call Center, who forward their requests for service electronically to the gas dispatch group. The ten service dispatchers are doing the same work they used to do in Southborough, under the same supervision.

The five load dispatchers work in a group called System Control and Data Acquisition, or SCADA, which is part of the Gas Supply organization. SCADA is a system that receives signals from the “take stations” in the field.<sup>19</sup> The signals enable the load dispatchers at the Summit to monitor the gas distribution system remotely. The load dispatchers regulate gas pressure, odorant levels, and injection rates, and monitor the systems for problems. They interact with employees from the Gas Supply group in the field from both bargaining units who maintain the take stations. For example, if the SCADA system identifies a possible leak or main break, the load dispatchers send out a crew to find out if the problem is malfunctioning instruments or an actual break. The SCADA system is manned 24 hours a day, seven days a week. The operation at the

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<sup>18</sup> The one exception to this is that the Plymouth service center does its own dispatching for gas service calls during the daytime hours. The dispatching function for electric customers is performed from two other locations, a main site at the Massachusetts Avenue/Boston service center and another in Plymouth.

<sup>19</sup> As more fully described below, take stations are sites where NSTAR receives gas piped in from its suppliers.

Summit is run in the same manner as it was in Southborough, under the same supervision.

The two end user transportation clerks who transferred to the Summit are also part of the Gas Supply organization. They prepare gas bills for those large customers who contract directly with other gas suppliers.<sup>20</sup> They report to a supervisor who supervises only the two of them. They interact with the load dispatchers and field technicians, e.g., if there is a problem with the devices in the field that measure gas consumption.

The installation clerk and the dispatch clerk work within the Gas Service organization. The dispatch clerk provides clerical support to the ten service dispatchers at the Summit. The installation clerk schedules installation of heating and hot water appliances by the service technicians. They interact with a gas sales clerk at the Summit who is represented by Local 369 and who is part of the Gas Sales and Marketing group.<sup>21</sup> The gas sales clerk takes calls from prospective customers who wish to purchase water heaters or furnaces. She refers the customers to sales representatives and does paperwork for completed sales. The gas sales clerk then passes the paperwork on to the installation clerk or to the dispatch clerk, who arrange for installation with the vendor and the customer. The work stations of the gas sales clerk and the installation clerk are ten feet apart, and they interact constantly. Until recently, the dispatch clerk covered for the installation clerk when she was absent, but beginning in November 2003, NSTAR began to have the Local 369 gas sales clerk handle the installation work in her absence instead.

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<sup>20</sup> It appears that NSTAR bills these customers for the cost of transporting gas through the NSTAR system that they have bought from other suppliers.

<sup>21</sup> The official title for the gas sales clerk is "Office assistant Grade 8." There is currently only one gas sales clerk. There were two, but one recently left.

Director of Gas Service James Devereaux testified that NSTAR planned to merge installations with sales, with a tentative date in February 2004. After the merger, the installation clerk would become part of the sales department.

The four clerk detailers who relocated to the Summit work in the Gas Distribution organization. They process work orders, pay invoices, enter data into the “paving” system, file easements, and do statistics reporting.<sup>22</sup> They interact with planners, distribution technicians, sales representatives, and the paving coordinator.

Two technical services clerks in the Gas Engineering group also relocated from Southborough to the Summit in August 2003. They were previously unrepresented, but are now in Local 369. They track “Dig Safe” work,<sup>23</sup> a data base for cast iron pipes, a data base for leaks, and a data base for compliance. They interact with clerk detailers from the field who send them the daily work schedules for the gas distribution group. They also interact with the Local 12004 planners in Southborough, who pass information to them.

At the Summit, Local 369 and Local 12004 employees share a common parking lot, cafeteria, and fitness center and use the same key card entry system. The 23 Local 12004 employees who transferred there in August are all located near one another in the Gas Operations area on the third floor of the building. Electric Operations, part of the

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<sup>22</sup> There are also clerk detailers represented by Local 12004 at field locations, one in Worcester, two in Southborough, two in Somerville, and one in Hyde Park. They process local permits, obtain police details, and handle payroll. There is a similar Local 369 clerical position in New Bedford and Plymouth.

<sup>23</sup> Dig Safe is a state program under which utilities such as NSTAR are required to notify contractors who plan to dig about any underground pipes they may encounter in the area.

Customer Care group, and the NSTAR Information Systems group, are also located on the third floor, along with various vice presidents in the Operations group.

#### **4. November 2003 -Consolidation of the Hyde Park and Dedham facilities**

In November 2003, NSTAR opened a new combined gas and electric service facility in Hyde Park, a neighborhood of Boston. At that time, 32 electric employees, primarily overhead workers, who are represented by Local 369, were transferred from the Massachusetts Avenue facility in Boston to Hyde Park. That month, NSTAR closed its gas service center in Dedham, and 27 Local 12004 gas employees from Dedham transferred to the new facility in Hyde Park.<sup>24</sup>

#### **5. December 21, 2003 – Implementation of “hub and satellite” plan for the garages**

As of December 21, 2003,<sup>25</sup> NSTAR plans to change to a “hub and satellite” system under which three of its garages, Massachusetts Avenue in Boston, Wareham, and Southborough, will become hubs to which vehicles will be brought for major repairs. Each hub will have satellites, garages that perform minor repairs. As a result of this change, the garage at Massachusetts Avenue, which had previously handled repairs only for electric vehicles, and the garage at Southborough, which had previously handled repairs only for gas vehicles, will now repair both gas and electric vehicles. The garage in Wareham has always repaired both gas and electric vehicles.

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<sup>24</sup> At the same time, a Local 12004 auto mechanic who had worked in Dedham was transferred to the combined gas and electric service center in Somerville.

<sup>25</sup> Two NSTAR managers testified on December 3 and 5, 2003 about NSTAR’s plan to implement this change on December 21, 2003. Presumably, the plan has been implemented at this point.

## **6. Upcoming consolidation of Framingham and Southborough service centers**

By the end of March 2004, NSTAR intends to close its electric service center in Framingham. At that time, 81 electric employees from Framingham, who are represented by Local 369, will be transferred to the gas service center in Southborough, which will become a combined gas and electric service center.<sup>26</sup> Southborough currently employs 32 employees represented by Local 369 and 102 employees represented by Local 12004.<sup>27</sup> After the consolidation, Southborough will employ 113 employees represented by Local 369 and 102 employees represented by Local 12004.

## **7. Upcoming relocation of 11 Local 12004 planners in the Gas Distribution department to the Summit**

In April or May 2004, NSTAR plans to relocate 11 planners in the Gas Distribution group, who are represented by Local 12004, from Southborough to the Summit. Planners correct plans, maps, and records of the gas distribution system and locate gas pipes for the “Dig Safe” program. They must take tests to qualify for the various ratings in their classification. Architectural drawings for their space at the Summit have been completed. They will move to the third floor of the Summit, near the Gas Distribution, Gas Service, Gas Sales, and Gas Engineering employees.

NSTAR also employs seven planners at the New Bedford service center who are represented by Local 369 and perform similar work for NSTAR’s Southern service area. They will remain in New Bedford.

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<sup>26</sup> NSTAR is currently renovating the Southborough facility to accommodate the additional employees and is awaiting a final decision from the Town of Southborough regarding some aspects of the renovations.

<sup>27</sup> The 32 Local 369 employees currently in Southborough are primarily meter readers and meter shop employees.



### C. Current level of integration of NSTAR'S gas and electric operations

NSTAR points to the following evidence of integration in its gas and electric operations in support of its argument in favor of creating a system-wide unit.

Werner Schweiger, senior vice president for operations, is responsible for both gas and electric operations at NSTAR. A vice president of engineering, vice president for electric operations, vice president for gas operations, and director of materials management/transportation report to Schweiger. Gas Operations includes groups for Gas Supply, Gas Distribution, Gas Service, Gas Engineering,<sup>28</sup> and Gas Sales and Marketing.

#### **1. Gas Supply**

Jonathon Pfister is director of gas supply operations. The Gas Supply organization is responsible for procuring natural gas from other companies. Gas is received from the Tennessee pipeline at 18 take stations,<sup>29</sup> where custody of the gas is transferred to NSTAR. There the gas is metered, conditioned, regulated for pressure and flow, and odorized before being sent through regulator pits that further reduce the pressure prior to sending the gas through the distribution system to customers. The Gas Supply organization also operates two LNG facilities, one in Achushnet and one in Hopkinton.<sup>30</sup>

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<sup>28</sup> The engineers in the Gas Engineering group, who work at the Summit, are unrepresented.

<sup>29</sup> Take stations are small metal buildings with meter equipment, pressure control equipment, heating equipment, odorizing equipment, and telemetering equipment for the signal to the SCADA computer. There are seven take stations in the Southborough area, four in the Worcester area, six in the Cambridge area, and additional take stations in the South.

<sup>30</sup> The Achushnet facility is manned by five LNG operators represented by Local 369. The Hopkinton facility is manned by employees of a contractor.

Mark Gunsalus has been the manager of field operations and LNG in this department since November 18, 2003. Previously, there were two managers, one for North operations, which employed employees represented by Local 12004, and one for South operations, which employed employees represented by Local 369. Local 369 and Local 12004 employees in this department still report to separate first-line supervisors, who report to Gunsalus. In the North areas, maintenance technicians, general technicians, and instrument technicians represented by Local 12004 maintain the equipment in the take stations and regulator pits, while maintenance mechanics, working leaders, and instrument technicians represented by Local 369 perform a similar function in the New Bedford and Plymouth area in the South. They interact with the Local 12004 load dispatchers in the SCADA group at the Summit, who monitor instruments that remotely identify leaks, main breaks, or other problems at the take stations and dispatch crews to resolve the problem.<sup>31</sup> Instrument technicians from the two bargaining units have joint training sessions about every fifteen months.

## **2. Gas Distribution**

Donald Bean is the director of gas distribution, which is responsible for the installation and maintenance of the underground gas mains and services that distribute gas to customers. This department employs 83 distribution technicians represented by Local 12004, who report to Worcester, Southboro, Hyde Park/Boston, and Somerville, and 27 utility technicians and working leaders represented by Local 369, who report to New Bedford and Plymouth. The employees in each bargaining unit report to different first and second level supervisors and managers, who, in turn, report to Bean. The

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<sup>31</sup> The take stations are generally unmanned. Crews are sent out to them when needed.

distribution crews work in two shifts, from 7:30 a.m. to 3:30 p.m. and from 3:30 p.m. to 11:30 p.m. Two technicians on the night crew cover the Somerville, Cambridge, Hyde Park/Boston, and Dedham areas.

The distribution technicians and utility technicians perform the same work using the same tools and equipment. They install pipes, fix leaks, and do “mark outs” for the Dig Safe program.<sup>32</sup> Installing or repairing pipes may involve using a backhoe to excavate the ground and performing welding work.<sup>33</sup> Distribution technicians receive both classroom and on-the-job training to progress through the various ratings within the classification.

As noted above, the Gas Distribution department also employs 11 planners in Southborough who are represented by Local 12004 and who will be moving to the Summit. It also employs, as noted above, four project control clerk detailers at the Summit, who are represented by Local 12004, clerk detailers in Worcester, Southborough, Hyde Park/Boston, and Somerville, who are represented by Local 12004, and clerks who perform a similar function in New Bedford and Plymouth, who are represented by Local 369.

### **3. Gas Service**

James Devereaux is the director of gas service. The Gas Service department is responsible for NSTAR’s emergency response efforts. Four managers for field

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<sup>32</sup> The distribution technicians spray paint the location of underground pipes or cables for contractors who will be digging in the area.

<sup>33</sup> Both bargaining units include welders and licensed backhoe operators, which are specialties within the distribution or utility technician classifications. Welders who work on the gas system must be certified, which requires advanced training and a test. Welders who work on the electric system do not need to be certified.

operations report to Devereaux, one for Worcester, one for Southborough, one for Hyde Park and Somerville, and one for New Bedford and Plymouth. Ten service supervisors at the field locations report to the managers. About 26 service technicians represented by Local 369 report to the service supervisors in New Bedford and Plymouth. About 90 service technicians represented by Local 12004 report to the supervisors at the other locations.

Service technicians represented by both bargaining units perform essentially the same duties. They respond to customer calls concerning gas odor, or lack of heat or hot water. They turn gas on and off for customers, change meters, investigate complaints regarding high gas bills, and shut off the gas at fire scenes. Service technicians provide coverage 24 hours a day, 7 days a week, in various shifts. They are trained by NSTAR and must take a test to progress between some of the ratings for their classification.<sup>34</sup>

The one distinction in the duties of the Local 12004 and Local 369 service technicians is that the Local 12004 service technicians, who work in the northern service territories, are responsible for shutting off the gas of customers who have not paid their bills, referred to as “shut off for nonpayment,” or “SONP” work. In the southern territories, SONP work is performed by a different classification within the credit group rather than by the Local 369 service technicians in the Gas Service department. In May and June of 2003, however, Devereaux assigned Local 369 employees from the southern

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<sup>34</sup> The tests are different in the North versus the South because of the two different unions, but the content is basically the same.

service territory to perform SONP work in northern areas usually serviced by Local 12004, because he needed extra resources there.<sup>35</sup>

In Southborough and Worcester, there is a separate classification for gas fitters, who thread pipe for large customers and connect meters for small customers. At the other locations, some of the service technicians are qualified to work as fitters and perform the same work. Fitters must be licensed by the state.

Within the Gas Service group, a manager for central service, who also reports to Devereaux, is responsible for the gas dispatch group at the Summit, the meter shop in Southborough, and an installation group.

#### **4. Electric Operations**

NSTAR serves 1,100,000 electric customers. NSTAR does not generate its own electricity. It operates bulk power stations, called substations, that feed power to lower level transmission lines, which, in turn, supply electricity to smaller distribution systems.

Phil Andreas is vice president for electric operations. Three directors for electric operations, a director for electric service, and directors for station operations, project management, and systems support report to Andreas. Various managers report to the directors. The electric operations group is responsible for construction and maintenance of the electric system. The electric service group is responsible for operating the system and for responding to trouble calls. This group was created in 2002, having been carved out of the construction and maintenance organization. Station operations is responsible for all of NSTAR's electric substations. Systems support is responsible for the computer system that supports the electric system, for emergency preparedness, and for records

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<sup>35</sup> The record does not reveal how many Local 369 employees were assigned to do this work or how much time they spent in the northern service territory.

management. The project management group, which was created in 2003, handles construction contracts.

The bargaining unit employees in electric operations are all represented by Local 369. They include trouble men, who are first responders, and various employees who work on the construction and maintenance of the underground electric system or on the overhead lines.<sup>36</sup> Electric workers are required to have specialized training. For overhead workers, there is a company school in Waltham that provides classroom and on-the-job training. Linemen must learn how to climb poles and pass a climbing test. They are trained to operate bucket trucks and gradually learn how to handle working with wires of increasing voltage levels, taking written examinations as they progress through each level. They must complete a four to five-year apprenticeship to work on overhead lines at 345,000 volts. Operator mechanics who work on the substations serve an apprenticeship and undergo training and testing that takes about three and a half years to complete. Underground distribution lines workers similarly progress through various ratings after training and testing.

### **5. NSTAR departments and groups that service both gas and electric operations**

In further support of its argument in favor of creating a system-wide unit, NSTAR points to the following evidence of integration in the servicing of its gas and electric operations.

#### **a. Transportation Department**

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<sup>36</sup> Most of the underground work is located in Boston and Somerville. The other areas have primarily overhead work.

James Elliot is the manager of the Transportation group, and five supervisors report to him. NSTAR employs about 60 auto mechanics who maintain and repair its fleet of gas and electric vehicles.<sup>37</sup> Those represented by Local 369 are classified as auto mechanics, while those represented by Local 12004 are called garage mechanics or garage attendants. Currently, the Local 369 and Local 12004 auto mechanics in Somerville are commonly supervised, and the Local 369 and Local 12004 auto mechanics in Southborough will share common supervision after the Local 369 mechanics from Framingham relocate to Southborough. Those are the only two sites where mechanics from the two bargaining units share or will share common first-line supervisors.

Auto mechanics in the two bargaining units perform the same types of duties and use the same tools and equipment. Local 369 and Local 12004 auto mechanics have attended training together on the repair of hydraulic lifts,<sup>38</sup> as well as training on environmental hazards. Mechanics from both locals use the same computerized vehicle maintenance tracking system.

The garages at Massachusetts Avenue, Hyde Park, Waltham, Framingham, Walpole, Wareham, New Bedford, Plymouth, and Yarmouth employ only mechanics represented by Local 369. The garages in Worcester and Southborough employ only mechanics represented by Local 12004. The garage in Somerville employs mechanics from both bargaining units. Once the Framingham service center closes and is

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<sup>37</sup> All company vehicles are designated as either gas or electric.

<sup>38</sup> This entails 50 to 60 hours of classroom training.

consolidated with Southborough, three Local 369 mechanics will transfer to Southborough and work side by side with six mechanics represented by Local 12004.

The auto mechanics interact with the employees whose company vehicles they repair, who may sometimes be members of the other bargaining unit.<sup>39</sup> For example, the Local 369 mechanic in Hyde Park services gas and electric vehicles operated by both Local 12004 and Local 369 members.<sup>40</sup> The Local 369 and Local 12004 mechanics in Somerville service both gas and electric vehicles operated by members of both bargaining units.<sup>41</sup> Currently, the Local 369 mechanics in Framingham service only electric vehicles and the Local 12004 mechanics in Southborough service only gas vehicles, but they will all service both types of vehicles after the Framingham group relocates to Southborough. At the other locations, the mechanics service only vehicles operated by members of their own bargaining unit.<sup>42</sup>

As noted above, NSTAR planned to implement a “hub and satellite” plan for its transportation department as of December 21, 2003. Under this plan, garages at three

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<sup>39</sup> The mechanics pick up employees with disabled vehicles and interact with them concerning repairs.

<sup>40</sup> Records from the fleet management data base indicate that, in the last six months, Local 369 mechanics in Somerville did road calls for gas vehicles 10 times and were assigned to repair gas vehicles on 12 occasions. During the same period, the Local 12004 mechanic in Somerville did 41 road calls for electric vehicles and was assigned to work on electric vehicles 20 times.

<sup>41</sup> Check Didomenico, a gas service technician in Somerville, testified that the Local 12004 employees in Somerville go only to the Local 12004 mechanic for maintenance, although the Local 369 mechanic may handle their vehicles in the case of a breakdown.

<sup>42</sup> Currently, the Local 369 mechanics at Massachusetts Avenue, Waltham, and Yarmouth service only electric vehicles operated by Local 369 members. The Local 369 mechanics in Walpole service primarily electric vehicles, but also service vehicles from the Summit, which may be gas or electric. The Local 12004 mechanic in Worcester services only gas vehicles operated by Local 12004 members. The Local 369 mechanics in New Bedford, Plymouth, and Wareham service both gas and electric vehicles that are operated by Local 369 members.



hubs, Wareham, Southboro, and Massachusetts Avenue, will handle major repairs for both gas and electric vehicles. Satellite garages that are affiliated with each of the hubs will handle more minor repairs. An NSTAR witness testified that the numbers of mechanics at each site will change after implementation of the hub and satellite plan, but he did not specify how.

#### **b. Warehousing and Distribution**

Paul Rotty is NSTAR's manager of warehousing and distribution. NSTAR employs about 48 material handlers at ten warehouses at its various field locations. Five of them, who work at the warehouse in Southborough, are represented by Local 12004, and the balance are represented by Local 369. None of the warehouses employ material handlers from both bargaining units.<sup>43</sup> The Local 12004 and Local 369 material handlers have separate first-line supervisors<sup>44</sup> who, in turn, report to Rotty.

The material handlers in each unit have different titles, but perform essentially the same functions: receiving, storing, and distributing materials used by the field employees who maintain the gas and electric systems.<sup>45</sup> All of the warehouses use the same computerized inventory system. Local 369 employees at the warehouses in Hyde Park/Boston, Somerville, New Bedford, and Plymouth distribute both gas and electric materials. Local 12004 material handlers in Southborough currently handle primarily gas

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<sup>43</sup> There is currently one material coordinator in Framingham. Rotty testified that after the Framingham service center is merged into Southborough, he may continue to use just the Local 12004 warehouse employees in Southborough and move the material coordinator from Framingham to another location.

<sup>44</sup> There are six first-line supervisors for the Local 369 material handlers and one for the Local 12004 material handlers in Southborough.

<sup>45</sup> Local 369 employees have titles such as material handler and material coordinator, while Local 12004 employees have titles such as stock handler and stock clerk.

materials,<sup>46</sup> but will handle electric materials after the Framingham center closes and its employees relocate to Southborough. Warehouse employees at the other locations handle only electric materials.

Local 369 warehouse employees in Hyde Park and Somerville provide materials to the Local 12004 employees who work out of those sites. Local 12004 warehouse employees in Southborough will be providing materials to Local 369 electric employees after the merger of the Framingham and Southborough sites. Some high-volume, low-cost items, referred to as lobby stock, are left out for employees to take as needed without asking a material handler. Employees must interact with a material handler to obtain other types of supplies. When Local 369 material handlers receive gas parts that gas employees have ordered, they may deliver them to the gas tool room or put them in the gas employees' "dock lockers."

Southborough used to operate a centralized warehouse for all gas materials. Local 12004 material handlers from Southborough would accept delivery of all gas materials and then deliver those materials themselves to the other warehouses that store gas materials in New Bedford, Plymouth, Hyde Park/Boston, and Somerville. This required some interaction between the Local 369 material handlers at those sites and the Local 12004 employees making the deliveries. In 2003, NSTAR began to switch to a direct delivery system, so that vendors deliver items directly to these other locations.<sup>47</sup>

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<sup>46</sup> The Southborough warehouse currently provides consumables such as batteries and gloves to Local 369 meter readers who work there.

<sup>47</sup> About 60 percent of the material received by NSTAR is currently delivered directly to these sites. NSTAR's goal is to reach 80 percent by the end of the year.

The material handlers from Southborough still make weekly deliveries to these sites, but the amount of inventory delivered by them has been reduced.

Warehouse employees at the various sites contact one another by telephone or computer when they are looking for material and may send an employee to another site to pick up or deliver items. Warehouse employees at every site except Southborough cover for one another during vacations.<sup>48</sup> Local 12004 and Local 369 warehouse employees have attended various common meetings and training events.<sup>49</sup>

NSTAR employs procurement employees such as purchasing agents and buyer/planners at the Summit, some of whom are represented by Local 369. They purchase materials for both the gas and electric sides of the business. NSTAR began to consolidate the procurement of gas and electric supplies in 2001, but the bulk of the consolidation happened in April and May of 2003. Warehouse employees interact with procurement employees by telephone or e-mail regarding requests for material or problems with vendors, and the procurement employees also visit the warehouses, including Southborough, from time to time.

### **c. Facilities Management**

The Facilities Management group employs maintenance employees from both bargaining units who clean and maintain NSTAR buildings.<sup>50</sup> Maintenance employees

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<sup>48</sup> Rotty testified that this is so because he would not want to violate the union contract.

<sup>49</sup> This has included training on the computer software used in the warehouse, fork truck training, and training regarding use of hazardous materials.

<sup>50</sup> Local 369 titles in this group include utility worker, maintenance worker, and building maintenance mechanic. Local 12004 titles in this group include working leader, maintenance person, maintenance mechanic/electrician, and maintenance mechanic. Several of the NSTAR buildings are cleaned by contractors rather than by NSTAR employees.

from both bargaining units perform similar duties such as removing snow, landscaping, moving furniture, mopping, vacuuming, and cleaning bathrooms. They use similar tools and equipment. Each bargaining unit also has mechanics who do skilled work such as plumbing repairs, electrical repairs, and mechanical repairs on equipment such as air conditioning.

The new Hyde Park facility is maintained by employees from both bargaining units.<sup>51</sup> The other facilities employ maintenance employees only from one bargaining unit or the other. Local 12004 maintenance employees from Southboro,<sup>52</sup> Worcester, and Hyde Park, and Local 369 maintenance employees from Hyde Park are commonly supervised by Supervisor Charles Fitzpatrick. There are no other first-line supervisors in the Facilities Management group who supervise employees from both bargaining units.

#### **d. Employee and Labor Relations**

Manager of Labor Relations James McGuire bargains on behalf of NSTAR with respect to both Local 369 and Local 12004. One senior labor relations consultant handles primarily Local 12004 grievances and another handles primarily Local 369 grievances, but they assist each other. At the time of the hearing, there were 11 outstanding grievances filed by Local 369 and 11 outstanding grievances filed by Local 12004, many of which involve complaints by employees in one unit that employees in the other unit

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<sup>51</sup> Hyde Park has one maintenance employees who is represented by Local 12004. The record does not reveal how many maintenance employees at Hyde Park are represented by Local 369.

<sup>52</sup> NSTAR currently plans to have only Local 12004 maintenance employees clean and maintain the Southborough facility, even after the upcoming consolidation with Framingham. The Local 369 maintenance employees from Framingham will be dispersed elsewhere after that facility closes.

are doing their work or complaints that employees in one unit had been required to do the work of employees in the other unit.

NSTAR's manager of staffing is responsible for recruiting for entry-level positions as well as promotions. Bargaining unit employees receive notices regarding job openings in both units. When there is an opening within a bargaining unit, NSTAR gives preference first to employees within that bargaining unit and then to employees in the other bargaining unit, before recruiting outsiders. However, a job in one bargaining unit has been awarded to an employee in the other bargaining unit only about four to five times since 2001. It is NSTAR's position that seniority for purposes of layoffs is based on length of service with the company rather than length of service in the bargaining unit.

Employees in both bargaining units are eligible for the same health insurance, life insurance, dental insurance, vision care, and accidental death insurance. There are some differences between the two collective-bargaining agreements with respect to the years of service required in order to qualify for a fourth, fifth, and sixth week of annual vacation. Employees in the Local 369 unit have ten sick days per year, after which they may be eligible for short-term disability. Employees in the Local 12004 unit are entitled to up to six months of paid time for each illness or accident. Employees in both units enjoy the same 12 paid holidays, except that employees in the Local 12004 unit take Martin Luther King Day as a holiday, while employees in the Local 369 unit may take that day as a floating holiday. The two bargaining units have different pension plans.

Employees in both bargaining units are subject to common personnel policies, such as policies regarding alcohol and drugs, dress code, smoking, equal employment opportunity, and the like. Employees from both units participate on many of the same

committees, although there are separate joint labor management safety committees for each unit.

**e. Other Groups That Service Both Gas and Electric Operations**

Various NSTAR organizations housed primarily at the Summit support both the gas and electric sides of NSTAR's business. As described in the February 21, 2002 Decision, Order and Clarification of Bargaining Unit referred to above, the Customer Care group at the Summit now handles meter reading and billing for both gas and electric customers system-wide. An investment planning group tracks costs and creates budgets and forecasts for both gas and electric operations. NSTAR's chief information officer is responsible for a group that provides system-wide telecommunication and computer services. The financial and strategic planning group, controller, real estate investment group, investor relations, general counsel's office, communications group, government affairs, and media relations all have system-wide responsibilities.

A manager of field safety is responsible for ensuring that OSHA standards are followed at both electric and gas job sites. Six field safety supervisors who report to him inspect the job sites. Some are responsible for inspecting gas job sites and some for electric job sites, but the gas and electric field safety supervisors cover for one another while on vacation. There are some OSHA requirements specific to gas and electric job sites, e.g., high voltage electric hazards, and others that are generic, such as wearing protective clothing and having accessible first aid kits and fire extinguishers. Both gas and electric workers are required to have CPR training, lock-out tag-out training, and blood borne pathogen training.

#### **4. Efforts to combine gas and electric operations**

NSTAR points to the following examples of its on-going efforts to combine its gas and electric operations in support of its argument in favor of creating a system-wide unit.

In the South, Director of Gas Distribution Donald Bean has assigned utility technician/backhoe operators from the Gas Distribution group to do excavation work for the Electric Operations group, work that is normally performed by contractors. They expose the malfunctioning cables so that the electric workers can make the necessary repairs and then backfill and restore the area.<sup>53</sup> He made 24 such assignments in 2002 and 19 in 2003, and he sees this work increasing in the future. Gas distribution crews in the South have also installed conduits and manholes for Electric Operations on a half dozen or more occasions, with projects lasting from two days to two weeks. In the North, the only “crossover” assignments occurred in the summer of 2002, when two crews of Local 12004 gas distribution workers did excavation work for Local 369 electric crews for two days on an emergency basis due to outages. A joint union-management committee has been trying to reach an agreement that would permit Local 12004 gas crews in the North to do this type of work on the underground electric system.

NSTAR owns one asphalt zipper truck that is kept in New Bedford and is used for excavation. In the summer of 2003, Local 369 employees and a supervisor from New Bedford brought the zipper truck to Dedham to train distribution technicians from Local 12004 how to use it. When the zipper truck is needed for a job in the northern area, Local 369 employees deliver it and Local 12004 employees use it. Bean testified that it

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<sup>53</sup> This involves Local 369 workers from the Gas Distribution group working with Local 369 workers from Electric Operations.

has been used for jobs in Worcester, Southborough, and Hyde Park, but the record does not reveal how often this has occurred.<sup>54</sup>

The gas distribution manager for Somerville and Hyde Park testified that gas distribution crews have occasionally assisted electric employees by doing some jack hammering to remove electric poles, or the electric employees have borrowed the jackhammer to do it themselves. Local 369 equipment mechanics in Somerville have occasionally repaired gas equipment such as drills or jack hammers or ordered new ones.

Electric Operations is rewriting its storm and emergency response plan to expand the number of gas employees used during electric outages caused by emergencies such as hurricanes, ice storms, and heat waves. Currently, 20 to 25 Gas Operations supervisors have been trained to survey wires down, stand by poles that are blocking roads, perform low voltage repairs, and excavate. Efforts to train bargaining unit employees in Gas Operations to do this work are in the planning stages.

NSTAR is combining gas and electric operations in other respects. NSTAR has previously bid out separate paving contracts for gas and electric projects, but has now bid out a consolidated gas and electric paving contract. NSTAR employees inspect the paving work, and there is clerical and administrative support for this function, but the record does not reveal what, if any, bargaining unit employees are involved.

In 2003, NSTAR hired a public works coordinator who will seek reimbursement from the state or cities that undertake construction projects that require the relocation of

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<sup>54</sup> Distribution technician Tom Nugent testified that the zipper truck was used for one day for a job in Worcester.



gas mains or electric lines and poles. The record does not reveal whether this is a bargaining unit position.

### **5. Contact between gas and electric physical workers at the combined service centers**

NSTAR points to the following evidence of contact between employees at its three combined service centers in Somerville, Hyde Park, and Southborough in support of its argument in favor of creating a system-wide unit, or, in the alternative, combining the employees of these three facilities.

As noted above, gas employees represented by Local 12004 and electric employees represented by Local 369 currently report to combined service centers in Somerville and Hyde Park and will soon report to a combined service center in Southborough. The gas service, gas distribution, electric overhead, and electric underground workers who work out of these locations report to their facilities each morning to obtain their assignments and pick up NSTAR trucks. They spend their day at jobsites in the field and return to the service centers at the end of their shifts. They occasionally return to the facilities during the day to pick up supplies. Some of the gas service technicians take their NSTAR vehicles home after their shifts end, in which case they get their assignments by pager or radio from the gas dispatch group in Westwood and report directly to their first job.<sup>55</sup> They may report to the combined service center once or twice a week to drop off paperwork and pick up supplies. Thus, most gas workers at the combined service centers see electric workers only at the beginning or end

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<sup>55</sup> In Somerville, all but five or six of the gas service technicians take their vehicles home. All eleven service technicians in Hyde Park take their vehicles home. Some of the service technicians in Southborough take their vehicles home.

of the day, at the service centers.<sup>56</sup> Some gas distribution employees and service technicians testified that they see the electric workers only in passing.

The gas and electric employees at these combined service center facilities park their personal vehicles in common parking lots,<sup>57</sup> use the same key card entry system, change and shower in common locker rooms,<sup>58</sup> and share kitchen facilities. The gas and electric employees at these facilities obtain their assignments in separate “ready rooms” and there are separate tool rooms for gas and electric materials. In Somerville, Gas Operations is on the second floor and Electric Operations is on the first floor. Gas and electric crews use the same meeting rooms at these facilities. They occasionally attend common meetings or training events<sup>59</sup> or office holiday parties. Employees at these facilities take their vehicles to a common garage for repairs. Each facility has a common warehouse, with separate areas for gas and electric material.<sup>60</sup>

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<sup>56</sup> Gas distribution technician Ross Quigley, who works out of Hyde Park, testified that, if gas employees are digging, NSTAR electric employees may come to the area to mark their underground electric lines. That is his only contact with electric employees in the field.

<sup>57</sup> There are generally separate parking areas for NSTAR gas and electric vehicles.

<sup>58</sup> Gas service and gas distribution employees wear uniforms. Electric employees wear street clothes. They all wear personal protective equipment, such as hard hats and vests.

<sup>59</sup> The types of meetings that have been or may be attended by both gas and electric employees include orientation for new employees, retirement seminars, an annual employee survey, United Way meetings, investment strategy workshops for employee 401(k) plans, meetings regarding new Department of Transportation guidelines limiting the number of hours employees may drive commercial vehicles, safety award meetings, CPR/first aid training, hazardous material training, or backhoe training. Some of these meetings take place at the service centers and some take place at the Summit.

<sup>60</sup> The combined gas and electric service centers in Plymouth and New Bedford, which are staffed only by Local 369 employees, are similar in that gas and electric employees there share facilities such as parking, meeting rooms, locker rooms, cafeterias, garages, and warehouses. In New Bedford, however, there are separate buildings for Gas and Electric Operations.

## **6. The rate-setting process**

As noted above, NSTAR was created by the 1999 merger of BEC Energy and Com/Energy. BEC Energy's principal operating subsidiary was Boston Edison. COM/Energy's principal relevant operating subsidiaries were Cambridge Electric, Commonwealth Electric, and Commonwealth Gas Company. Boston Edison, Cambridge Electric, Commonwealth Electric, and Commonwealth Gas, renamed NSTAR Gas Company, referred to as operating companies, are now wholly-owned subsidiaries of NSTAR Gas & Electric Corporation, which is itself a subsidiary of NSTAR. The operating companies have no employees, but still exist for purposes of regulation by the Massachusetts Department of Telecommunications and Energy (DTE) and other regulatory bodies.

DTE sets the rates that the operating companies may charge their customers. There are currently separate rates for each of the four operating companies, each covering the old service territory covered by that operating company prior to the merger.<sup>61</sup> NSTAR presents its costs and a rate proposal to DTE, which approves or modifies the proposal after a hearing. The cost of labor for each of the operating companies, as well as the cost of the distribution and transmission infrastructure, are factored into the rates. An accounting group allocates to each of the operating companies the costs of locations

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<sup>61</sup> Boston Edison's territory encompasses Boston and surrounding towns. Cambridge Electric covers the City of Cambridge. Commonwealth Electric's territory includes the Plymouth and New Bedford areas as well as Cape Cod and Martha's Vineyard. At the time of the merger, DTE prohibited NSTAR from consolidating the rates for the various operating companies. That prohibition ended in August 2003, but NSTAR has not yet proposed to consolidate rates, although that is the goal. If the rates were consolidated, it is anticipated that there would be one rate for electric customers and one rate for gas customers.

that do both gas and electric work and the costs of administrative or support functions that support both gas and electric work, such as the Call Center.

### **III. DISCUSSION**

#### **A. The Legal Standard**

Unit clarification is appropriate for resolving, *inter alia*, ambiguities concerning the unit placement of individuals whose classifications have undergone recent, substantial changes in duties and responsibilities so as to create real doubt as to whether the individuals in such classifications continue to fall within the excluded or included category that they occupied in the past. *Bethlehem Steel Corp.*<sup>62</sup> In determining whether to grant a petition for unit clarification grounded on accretion, the Board examines whether the employees sought to be accreted not only possess a community of interest with the unit employees, but also lack a distinct identity that would warrant placing them in a separate unit. *KMBZ/KMBR Radio*.<sup>63</sup> Because the process of accretion does not afford affected employees the opportunity to vote for or against representation, the Board follows a restrictive policy in its application. *Dennison Manufacturing Co.*<sup>64</sup> It will find a valid accretion “only when the additional employees have little or no separate group identity...and when the additional employees share an *overwhelming* community of interest with the pre-existing unit to which they are accreted.” *Staten Island University Hospital*.<sup>65</sup>

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<sup>62</sup> 329 NLRB 243 (1999), citing *Union Electric*, 217 NLRB 666, 667 (1975).

<sup>63</sup> 290 NLRB 459, 460 (1988).

<sup>64</sup> 296 NLRB 1034, 1036 (1989), citing *Compact Video Services*, 284 NLRB 117, 118 (1987).

<sup>65</sup> 308 NLRB 58, 61 (1992), citing *Safeway Stores*, 256 NLRB 918 (1981).

Clarification is not appropriate, however, for upsetting an established practice of the parties concerning unit placement. Thus, where classifications have been historically excluded or included in a unit, and there have been no recent, substantial changes that would call into question the placement of employees in the unit, the Board generally will not entertain a petition to clarify the status of those classifications. *Bethlehem Steel Corp.*<sup>66</sup>

When two or more groups of employees represented by different labor organizations are relocated by an employer and begin working as a consolidated, fully integrated work unit, such that the separate identities of the two units which previously existed have been obliterated and there now exists only a single appropriate unit, the threshold question presented is whether or not, by its actions, the employer has formed a new operation. If so, when no single labor organization represents a predominant number of the newly merged employees, the Board has uniformly held that a question concerning representation exists and it has ordered an election so that the wishes of the majority of employees may be determined. *Martin Marietta Co.*;<sup>67</sup> *Massachusetts Electric Co.*;<sup>68</sup> *Boston Gas Co.* (Boston Gas I);<sup>69</sup> *General Electric Co.*;<sup>70</sup> *National Carloading Corp.*<sup>71</sup>

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<sup>66</sup> Supra at 244, citing *Union Electric*, 217 NLRB 666, 667 (1975).

<sup>67</sup> 270 NLRB 821, 822 (1984). In *Martin Marietta*, the employer consolidated two units historically represented by different labor organizations. The Board held there that it would not impose one of the two unions on the consolidated unit by accretion unless the group that union previously represented was "sufficiently predominant to remove the question concerning overall representation." The fact that one of the groups was slightly larger than the other was insufficient.

<sup>68</sup> 248 NLRB 155, 157 (1980).

<sup>69</sup> 221 NLRB 628, 629 (1975).

<sup>70</sup> 185 NLRB 13 (1970).

Additionally, these circumstances remove any contract bar to an election. *Martin Marietta Co.*;<sup>72</sup> *Boston Gas Co. (Boston Gas I)*;<sup>73</sup> *General Electric Co.*;<sup>74</sup> *National Carloading Corp.*<sup>75</sup> On the other hand, when one of the labor organizations involved represents an overwhelming majority of the employees in the newly commingled group, the Board has found that no question concerning representation exists and, further, that the smaller unit of employees constitutes an accretion to the larger one. *U.S. West Communications*;<sup>76</sup> *Boston Gas Co. (Boston Gas II)*.<sup>77</sup>

## B. Findings

### **1. Appropriateness of an accretion into, or an election in, a system-wide unit**

I find that the changes NSTAR has made since the parties entered into their current collective-bargaining agreements do not warrant a finding that there is a new operation that warrants either a system-wide accretion of the Local 12004 employees into the Local 369 unit or an election on a system-wide basis. In this regard, the most significant recent changes are 1) the opening of the combined gas and electric service center in Hyde Park, 2) the upcoming consolidation of the Framingham and

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<sup>71</sup> 167 NLRB 801, 802 (1967). Here the Board explained that it would order an election in cases in which both employee groups are represented, and neither sufficiently predominant, in order to ensure that the disruptive influence that conflicting representation claims might have on industrial peace and harmonious bargaining relationships is eliminated.

<sup>72</sup> Supra at 822.

<sup>73</sup> Supra at 629.

<sup>74</sup> Supra at 13-14.

<sup>75</sup> Supra at 802.

<sup>76</sup> 310 NLRB 854 (1993).

<sup>77</sup> 235 NLRB 1354, 1355 (1978).

Southborough service centers into a combined gas and electric service center at the Southborough location,<sup>78</sup> and 3) the relocation of 23 Local 12004 employees from Southborough to the Summit. Because of these changes, more Local 12004 and Local 369 workers are now or will soon be reporting to the same facility than in the past, resulting in some additional contact between the two groups, such as contact between physical workers<sup>79</sup> from one bargaining unit and auto mechanics or warehouse employees from the other unit.<sup>80</sup>

Nonetheless, it cannot be said that, as a result of the relocations, the Local 12004 workers have lost their separate identity. Because of the different nature of gas and electric work, the Local 12004 and Local 369 physical workers at the combined service centers necessarily perform different duties and have different skills and training, typically acquired by serving a long apprenticeship and by progressing through various ratings within a classification. There can be no temporary interchange between the gas and electric physical workers because of the specialized training required. An employee who is trained to maintain the overhead electric lines cannot repair a gas main and vice versa. Cf. *U.S. West Communications, Inc.*<sup>81</sup> (unit of 500 toll takers accreted into unit of 35,000 telephone workers, where, as a result of changes in technology, the two groups of

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<sup>78</sup> I note that Somerville became a combined gas and electric service center in 2001, before NSTAR and Local 12004 entered into their current agreement, so that is not a recent change.

<sup>79</sup> By the term “physical” worker, I refer to those employees who construct, maintain, and service the gas and electric infrastructure.

<sup>80</sup> I note that Southborough already employed employees from both bargaining units even before the relocation of the Framingham operation to Southborough.

<sup>81</sup> *Supra*.

employees often work side by side using the same equipment, performing similar tasks); *Massachusetts Electric Co.*<sup>82</sup> (a new operation warranting an election was created, where transferred employees will be merged with employees who are in similar or identical classifications, and the formerly separate but identical work will now be performed on a fully integrated but commingled basis).

While there has been some effort to have gas workers assist with electric operations, e.g., by having gas workers perform excavation work for the electric workers, such assistance has occurred primarily at combined service centers in the South, where the gas and electric workers are all represented by Local 369. Local 12004 gas workers and Local 369 electric workers at the newly combined service centers in the North do not work side-by-side, and have only limited contact with each other at the beginning and end of each workday by virtue of reporting to the same facility or occasionally attending common meetings. Importantly, the Local 12004 gas crews and Local 369 electric crews are separately supervised, at least at the first and second levels.

As for the 23 Local 12004 employees who have transferred to the Summit, it is true that they now work in a building where they are surrounded by 464 Local 369 employees, with whom they share a common parking lot, cafeteria, and fitness center. The move, however, has not resulted in a new operation. The Local 12004 employees at the Summit work in a discrete area on the third floor of the Summit. They are now performing the same duties that they performed in Southborough, under the same supervision, which is separate from that of Local 369 employees. With one exception discussed below, there is no interchange between the Local 12004 and Local 369

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<sup>82</sup> *Supra*. I note that in this case, all of the merged workers were electric workers.



employees at the Summit. Although the Local 12004 load dispatchers and gas dispatchers at the Summit have some contact with Local 369 employees in the field, that was true before the move to the Summit.

In reaching this conclusion, I am aware that Board policy favors system-wide units in the utility industry. *U.S. West Communications, Inc.*<sup>83</sup> I recognize that one result of creating the new combined service centers has been an increase in the use of common support services for the gas and electric sides of the business, such as common garage, facilities management, and warehouse services. This means that physical workers from both bargaining units may have more contact with auto mechanics, warehouse employees, or cleaners from the other bargaining unit at the combined service centers. Apart from changes resulting directly from the consolidation of service centers, it is true that many NSTAR departments have system-wide responsibilities. For example, there is a common human resources department and employees in both bargaining units share some common benefits and employment policies. The customer care organization now handles all meter reading and billing for both gas and electric customers. Other groups such as procurement, investment planning, and telecommunications support both gas and electric operations system-wide.

I find, in any event, that all of those factors are outweighed by the long history of separate bargaining, and by the generally separate duties, skills, and training of the Local 12004 and Local 369 employees, particularly the physical workers who form the core of the two operations.<sup>84</sup> In addition to the separate supervision and lack of temporary

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<sup>83</sup> Supra at 855, citing *New England Telephone Co.*, 242 NLRB 793 (1979).

<sup>84</sup> As a result of the 1999 merger, it is also true that there are many instances in which there are employees who perform the exact same duties and have the same qualifications and training,

interchange between the Local 12004 and Local 369 employees noted above, there has been virtually no permanent interchange between the two bargaining units as a whole; among the approximately 2300 employees in both bargaining units, there have been only four to five transfers between the two units since 2001. There are also some differences in the benefits of the two bargaining units, including different pension plans and different vacation and sick leave benefits. In sum, the Local 12004 bargaining unit as a whole has not lost its separate identity as a result of the changes.<sup>85</sup>

The fact that the consolidation of operations has caused disputes over the assignment of work does not warrant a contrary result. The parties are free to bargain over such matters, as they did successfully in the case of the meter reading work, and to resort to the grievance and arbitration process if they are unable to negotiate a resolution.

## **2. Appropriateness of an accretion or election among the employees in the combined service centers**

For the reasons set forth above, I find that an accretion or election among employees at the combined service centers is not warranted. Thus, while there is some contact between the employees in the two units at the combined service centers, such as contact between physical workers from one unit and auto mechanics or warehouse employees from the other unit, and contact at the beginning and end of each workday by

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although are in different bargaining units. That is true of physical workers from both units in the Gas Supply, Gas Distribution, and Gas Service groups, as well as of auto mechanics, warehouse employees, and building maintenance employees. That is not a recent change, however, as this was true long before the parties entered into their current collective-bargaining agreements.

<sup>85</sup> In finding that a system-wide unit is not warranted, I do not rely on Local 12004's argument that the separate rate-setting process for NSTAR's various gas and electric operating companies warrants maintaining the status quo. The DTE's rate-setting process has no bearing on the day-to-day working lives of the unit employees, nor do I find it significant that each subsidiary can increase profits by reducing labor costs.

virtue of reporting to the same facility or occasionally attending common meetings, it cannot be said that either group has lost its separate identity. Rather, the Local 12004 and Local 369 physical workers at the combined service centers necessarily perform different duties, have different skills and training, and generally do not work side-by side, so that there can be no temporary interchange between them. Finally, the Local 12004 gas crews and Local 369 electric crews are separately supervised, at least at the first and second levels. Accordingly, neither an accretion nor an election is appropriate on a combined service center basis.

### **3. Appropriateness of an accretion among the employees transferred from Southborough to the Summit**

For the reasons set forth above, I find that the relocation of the 23 Local 12004 employees to the Summit does not warrant their accretion into the Local 369 bargaining unit.<sup>86</sup> Thus, while the Local 12004 employees work in a building where they are surrounded by Local 369 employees, with whom they share a common parking lot, cafeteria, and fitness center, they work in a discrete area on the third floor of the building, performing the same duties that they performed in Southborough, under the same supervision, which is separate from that of Local 369 employees, and have virtually no interchange with the Local 369 employees. Accordingly, an accretion involving the Local 12004 employees who have transferred to the Summit is not appropriate.

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<sup>86</sup> Although NSTAR plans to move 11 planners in the Gas Distribution group from Southborough to the Summit in April or May 2004, NSTAR does not appear to argue that these Local 12004 employees should be included in any accretion or election.

#### **4. Appropriateness of an accretion or election among employees with shared jobs**

Notwithstanding my findings concerning the separate identity of the Local 12004 bargaining unit as a whole, there are some particular instances in which the relocation of employees has resulted in employees from both bargaining units working side-by-side, performing the same duties, under common first-level supervision. These groups are as follows:

a) The gas meter shop in Southborough, where two or three Local 369 employees who transferred from New Bedford now work side-by-side with eight to ten Local 12004 employees.<sup>87</sup>

b) The garage in Southborough, where three Local 369 auto mechanics will shortly work side-by-side with six Local 12004 auto mechanics.

c) The garage in Somerville, where one Local 12004 auto mechanic who was relocated there upon the closure of the Dedham facility now works side-by-side with three Local 369 auto mechanics.<sup>88</sup>

d) The facilities management group in Hyde Park, where one Local 12004 cleaner works side-by-side with Local 369 cleaners.<sup>89</sup>

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<sup>87</sup> There are currently two Local 12004 employees in the meter shop. A third was on away or light duty prior to the move. According to an organizational chart for the Gas Service group and the testimony of the director of gas service, there are a total of ten employees in the meter shop. Employer Exhibit 9 lists various titles that may or may not refer to meter shop employees: two repair technicians and one working leader-meter rep (Gas) represented by Local 12004, and four meter repair technicians, one service meter technician, and five special meter maintenance technicians represented by Local 369.

<sup>88</sup> According to Employer Exhibit 9, Local 369 represents two “auto mechanics A” and one “leader, auto repair.” The Local 12004 mechanic in Somerville has the title “working foreperson transport.”

<sup>89</sup> The record does not reveal the number of Local 369 cleaners working in Hyde Park.

e) The Local 12004 installation clerk at the Summit, who works physically near and interacts constantly with a Local 369 gas sales clerk. I note that the gas sales clerk covers installation work in the absence of the installation clerk and that NSTAR planned to move the installation clerk into the gas sales department as of February 2004.<sup>90</sup>

With respect to the merger of these small groups of employees, I find that new operations have been created.<sup>91</sup> I find further that neither Union represents such an overwhelming majority of the employees in any of these groups that an accretion is warranted.<sup>92</sup> *Martin Marietta Co.*;<sup>93</sup> Rather, I shall hold separate elections among each of these groups of Local 12004 and Local 369 employees in order to permit each group to choose whether to be included in the overall Local 12004 or Local 369 unit.<sup>94</sup>

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<sup>90</sup> I shall not include the dispatch clerk in this group because, although she has done some installation work, she provides clerical support to the ten Local 12004 service dispatchers at the Summit and will not be transferred into the same department as the installation and gas sales clerks.

<sup>91</sup> NSTAR also asserts that Local 12004 and Local 369 employees in the warehouse occupy shared jobs and should be the subject of an accretion or an election. Although the warehouse employees at the newly combined service centers may now have increased contact with physical workers from the other bargaining unit, there is no facility that employs warehouse employees from both bargaining units, and the warehouse workers in each bargaining unit have separate first-line supervisors. In these circumstances, I decline to find that the consolidation of the service centers has created a new operation in the warehouse and distribution organization.

<sup>92</sup> In fact, in two instances, the gas meter shop and the garage in Southborough, the Local 12004 employees outnumber the Local 369 employees, so that any accretion that occurred would have to be into Local 12004 rather than into Local 369. I note that no party has sought to accrete Local 369 employees into Local 12004.

<sup>93</sup> *Supra*, 270 NLRB at 822.

<sup>94</sup> In the case of the clerks at the Summit, the gas sales clerk and installation clerk will form a voting group.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I shall direct elections in the following voting groups for this purpose:<sup>95</sup>

Voting Group (a):

All full-time and regular part-time technicians employed by the Employer in the gas meter shop at its Southborough, Massachusetts facility, but excluding office clerical employees, guards, and supervisors as defined in the Act.

Voting Group (b):

All full-time and regular part-time employees employed by the Employer in auto mechanic classifications at the garage at its Southborough, Massachusetts facility, but excluding office clerical employees, guards, and supervisors as defined in the Act.

Voting Group (c):

All full-time and regular part-time employees employed by the Employer in auto mechanic classifications at the garage at its Somerville, Massachusetts facility, but excluding office clerical employees, guards, and supervisors as defined in the Act.

Voting Group (d):

All full-time and regular part-time employees employed by the Employer in the Facilities Management department at its Hyde Park, Massachusetts facility, but excluding office clerical employees, guards, and supervisors as defined in the Act.

Voting Group (e):

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<sup>95</sup> In some cases, the record does not reveal all of the precise titles of the employees in the voting group, so I have described some of the voting groups using more generic terms. Employees in the gas meter shop may have titles such as repair technician, working leader, and meter repair technician, but there may be others such as special meter maintenance technician or service meter technician. Employees in the garages in Southborough appear to have the titles auto mechanic A, leader, auto repair, garage attendant, working foreperson transport, and possibly mechanic A. Job titles in the garage in Somerville, as noted above, include auto mechanic A, leader, auto repair, and working foreperson transport. The Facilities Maintenance group generally employs employees with titles such as utility worker, building maintenance mechanic A and B, working leader, maintenance person, master electrician, and maintenance mechanic, but the record does not reveal which of these titles are located in Hyde Park. The official title of the gas sales clerk in the Gas Sales and Marketing group is office assistant grade 8.

All full-time and regular part-time gas sales clerks and installation clerks employed by the Employer in the Gas Sales and Marketing department at the Summit Building in Westwood, Massachusetts, but excluding all other clerical employees, guards, and supervisors as defined in the Act.

If a majority of the valid ballots in a voting group are cast for United Steelworkers of America, Local No. 12004, AFL-CIO, CLC, the employees in that voting group will be deemed to have indicated their desire to be included in the existing unit currently represented by Local 12004, and it may bargain for those employees as part of that unit. If a majority of the valid ballots in a voting group are cast for Utility Workers Union of America, Local No. 369, AFL-CIO, the employees in that voting group will be deemed to have indicated their desire to be included in the existing unit currently represented by Local 369, and it may bargain for those employees as part of that unit. If a majority of the valid ballots are cast against representation, the employees will be deemed to have indicated their desire to be unrepresented, and I will issue a certification of results to that effect.

### **DIRECTION OF ELECTIONS**

Elections by secret ballot shall be conducted by the Regional Director among the employees in the voting groups found appropriate at the time(s) and place(s) set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting groups who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the

election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by United Steelworkers of America, Local No. 12004, AFL-CIO, CLC or by Utility Workers Union of America, Local No. 369, AFL-CIO, or by neither union.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters for each voting group and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*;<sup>96</sup> *NLRB v. Wyman-Gordon Co.*<sup>97</sup> Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list for each voting group containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. *North*

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<sup>96</sup> 156 NLRB 1236 (1966).

<sup>97</sup> 394 U.S. 759 (1969).



*Macon Health Care Facility*.<sup>98</sup> In order to be timely filed, such lists must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before April 8, 2004. No extension of time to file these lists may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **ORDER**

In view of the foregoing, **IT IS HEREBY ORDERED** that the petition in Case 1-UC-815 is dismissed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision, Order, and Direction of Elections may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by April 15, 2004.

/s/ Rosemary Pye

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Rosemary Pye, Regional Director  
First Region  
National Labor Relations Board  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

Dated at Boston, Massachusetts  
this 1st day of April 2004.

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<sup>98</sup> 315 NLRB 359 (1994).